

COPY

James E. Torske
314 North Custer Avenue
Hardin, Montana, 59034
406-665-1902
Attorney for Defendant

**IN THE CROW TRIBAL CIVIL COURT
IN AND FOR THE CROW INDIAN RESERVATION
P.O. BOX 489, CROW AGENCY, MONTANA, 59022**

IN RE THE MATTER:

ALDEN BIG MAN,

Plaintiff,

v.

**BIG HORN COUNTY ELECTRIC
COOPERATIVE, INC., a Montana
Corporation**

Defendant.

CIVIL CASE NO. 12-118

ANSWER TO COMPLAINT

For its Answer to the Complaint filed in the above-entitled action, Defendant, BIG HORN COUNTY ELECTRIC COOPERATIVE, INC., by and through its counsel of record, JAMES E. TORSKE, hereby admits and alleges as follows:

ANSWER

PARTIES

1. Paragraph 1 of Plaintiff's Complaint speaks for itself and requires no answer or other response.

2. Defendant admits the allegations set forth in paragraph 2 of the Complaint.

JURISDICTION

3. Defendant admits it entered into a consensual contractual relationship with Plaintiff as alleged in paragraph 4 of the Complaint and by reason of the terms of said contract this court lacks jurisdiction because Plaintiff agreed the "laws of the State of Montana shall control and be exclusively applied for the purpose of determining the rights of the Cooperative and Applicant hereunder and the Montana Thirteenth Judicial District Court, Big Horn County shall have exclusive jurisdiction and venue for the purpose of actions or proceedings brought to determine the rights of either the Cooperative or the Applicant arising by reason of membership in the Cooperative or delivery of electric energy to said member or any or all rights arising by reason of this membership agreement, articles of incorporation or by by-laws of the Cooperative."

4. For the purpose of preserving said defense, Defendant denies the remaining allegations concerning jurisdiction set forth in paragraphs 4 and 5 of the Complaint.

FACTS

5. Defendant denies the allegations of set forth in paragraph 1 of the Complaint and alleges Plaintiff's electrical service was disconnected at 1:13 p.m. on January 26th, 2012, as shown by by Plaintiff's account printout attached as Exhibit D-1.

6. Defendant denies the allegations set forth in paragraph 2 and affirmatively alleges Defendant gave Plaintiff written notice of termination, at least two weeks before disconnect, by United States mail dated 1-11-2012, a copy of which is attached as Exhibit D-2.

7. Defendant was not aware Plaintiff was a recipient of LIEAP benefits when it disconnected electrical services at 1:13 p.m., January 26, 2012, as shown upon the e-mail to Defendant's staff, sent by Patty Wilson Energy Assistance Supervisor at 2:03 p.m., January 26, 2012, attached as Exhibit D-3

8. Defendant is without knowledge or information sufficient to form a belief as to the truth and accuracy of the allegations set forth in paragraphs 3, 4, and 5 of the Complaint and therefore deny the same.

AFFIRMATIVE DEFENSE

Defendant, for its Affirmative Defense to the allegations set forth in the Complaint, states as follows:

1. Plaintiff has failed to state a claim against this answering Defendant upon which relief can be granted.

2. Laches bars recovery by Plaintiff.

3. Plaintiff's claims are barred by misrepresentations of Plaintiff, constituting fraud to Defendant and Defendant's agents and employees.

4. Defendant has met any and all contractual obligations to Plaintiff and/or otherwise acted reasonably in fact and law.

5. Estoppel bars any recovery by Plaintiff.

6. Failure of consideration bars any recovery by Plaintiff.

7. Recovery by Plaintiff is barred by the covenant of good faith and fair dealing.

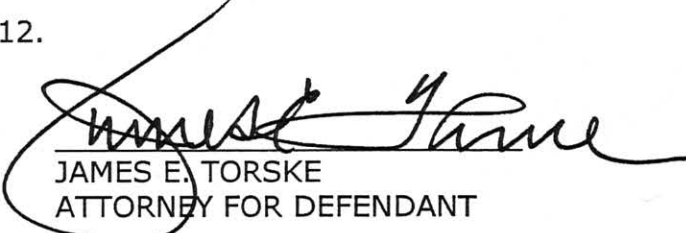
8. The above-entitled Court lacks jurisdiction over the conduct of Defendant in connection with its performance of contract as the same relates to Plaintiff as a member of the Defendant cooperative.

APPLICABILITY OF AFFIRMATIVE DEFENSES

This Answering Defendant has raised affirmative defenses in this Answer so that they will not be waived. Pre-trial investigation and discovery may disclose that some of the defenses raised may not apply. At the pre-trial conference, the Defendant will dismiss any affirmative defenses that do not appear to be reasonably supported by the facts and/or applicable law. These affirmative defenses are raised in the response to the allegations contained in the Complaint and as a recognition that the pleadings, discovery and trial preparation necessitate a thorough examination and evaluation of all circumstances of this case and the decision-maker should have available for consideration all defenses which may be applicable in this case.

WHEREFORE, Defendant prays that the Court dismiss this action with prejudice and Plaintiff be granted nothing by reason of his Complaint.

DATED this ^{7th} 10 day of May, 2012.


JAMES E. TORSKE
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that the foregoing Answer to Complaint and Affirmative Defense was duly served by first class mail, postage prepaid, this 11th day of May, 2012, upon the following interested parties:

Joe Hardgrave, Attorney at Law
Montana Legal Services Association
2442 First Avenue North
Billings MT 59101

By: 
James E. Torske



reated by db1 - 05/04/2012 12:44:44 PM MDT

Service Agreements : ALDEN BIG MAN, Cust#: 8443

Account Level Set Aside Retrieve (0)

Account...	Service	Provider	Serv Loc #	Serv Addr	Service Description	DNP	Serv Map Loc
9443000	ELEC...	BHEC...	3430	*	*	✓	35770000

Agreements Taxes Minimums/YTD

Agreement Status: 18 - Pending Disconnect
Rate Schedule: A - Residential & Public Bldgs
Revenue Class: 11 - MT Residential
Connect Date: 02/15/1999 New Account: 0 - Normal Status
Disconnect Date: TV/A: 0 AM PM
Final Bill Date: : AM PM
Prebill Comments:
Misc Group: ☐ Prebill Exempt ☒ Service Point
SIC Code: -

Service Priorities

☐ Has Generator
Medical Necessity: -
Outage Priority: -

Combined Metering Set

Participant Type: 0 - None
Combined Usage Group: 0

Nonpayment

☒ Disconnect For Nonpayment
DNP Date: 01/26/2012 1:13 AM PM

Service Location

Location Description: * Location Retired
Service Description: * Immediate Service Restore
Reading Route: 0 -
Own Or Rent: 0 - Owner
Disconnect Options: D - Ignore

EDI Service Provider Information

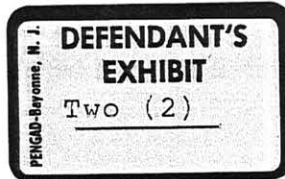
Service Delivery Pt:
Capacity Obligation: 0.00
Transmission Obligation: 0.00

Save Reset Related



P.O. Box 410
Hardin, Montana 59034-0410

Hardin Office: 406-665-2830
Lodge Grass Office: 406-639-2341



13 1 SP 0.440
ALDEN BIG MAN
PO BOX 271
CROW AGENCY MT 59022-0271

4 13
C-1 P-1

Notice Date	Account Number	Delinquent Amount Due
01/11/2012	8443000	496.47

Due to delinquency in payment for electric service
to the above account listed

**BIG HORN COUNTY ELECTRIC COOPERATIVE INC
GIVES NOTICE OF INTENT TO TERMINATE
ELECTRIC SERVICE**



TERMINATION NOTICE

By making payment in full by 01/23/2012, the inconvenience of being without electric service and the added collection and reconnect fees will be avoided.

*Mailed to
Consumer from
NISC on 1/11/12*

ng your payment, please contact one of our offices to see if you would
ent. Agencies are also available for help during the winter months.
Contact HRDC offices in your state.

mailed payment, please call our office at 406-665-2830 to verify payment.

BE PAID IN FULL and are subject to an additional deposit BEFORE being
reconnected.

JECT REGARDLESS OF ALL FUTURE STATEMENTS OR NOTICES!

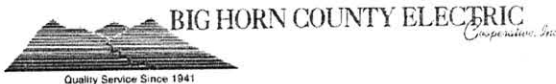
ct the debt, and any information will be used for that purpose.

APPLICABLE FEE SCHEDULE

ack Fee	\$20.00
e	\$100.00
ee	\$50.00

Retain this portion for your records

Please detach and return this portion with your payment.

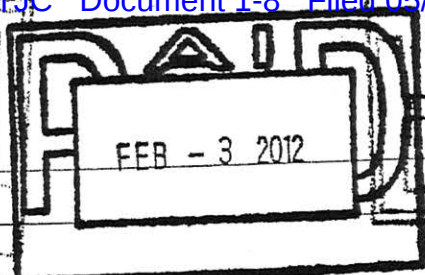


Account Number	Disconnect Date	Amount Due	Amount Paid
8443000	01/23/2012	\$496.47	

ALDEN BIG MAN
PO BOX 271
CROW AGENCY MT 59022-0271

Big Horn County Electric Cooperative
P.O. Box 410
Hardin MT 59034-0410



Labor
amt

K. Bigby 217.47

100.00

50.00

15.00

\$382.47

to rect - pd²

e-mail - Alvin EBell LBH Battifera

Alvin  NPS.gov

Alvin Bigby - has legal service after Path
 we shut him off @ 1:13 she emailed
 at 2:03 sending 485.00 not enough
 he would still have to pay 296.47
 he called and I told him that -

Frayed Power line Main Power
 line Jara Pitsch -
 East of House ~~across~~ toward Re
 in between 2 Sheds -

Shartell Stops - Wesley - \$171.28

Frances Knows Gun - 20.75 Dr
 on Jara's

Robert Old Horn - No one to pay
 Since Dec 9th